

KATHLEEN A. LEAVITT  
 CHAPTER 13 BANKRUPTCY TRUSTEE  
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*Electronically Filed on 4/02/10*

UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA

In re:	)	BK-S 10-11613 - MKN
	)	Chapter 13
DIANA D. GONZALEZ,	)	
	)	Date: May 6, 2010
Debtor.	)	Time: 2:00 p.m.

**TRUSTEE'S MOTION TO DISMISS CHAPTER 13 CASE PURSUANT TO 11 U.S.C. SECTION 521(i)  
 AND TO BAR DEBTOR FROM REFILEING PURSUANT TO 11 U.S.C. SECTION 109(g)**

COMES NOW the Chapter 13 Bankruptcy Trustee, KATHLEEN A. LEAVITT, by and through her counsel of record, Tirzah F. Mathews, Esq., requests the Court to dismiss the above-captioned bankruptcy case pursuant to 11 U.S.C. §521(i) and bar the Debtor from re-filing for 180 days pursuant to 11 U.S.C. §109(g)(1).

**STATEMENT OF FACTS**

On February 2, 2010, DIANA D. GONZALEZ ("Debtor") filed a Voluntary Petition seeking bankruptcy relief under Chapter 13 of the Bankruptcy Code. Because Debtor's petition was filed after October 17, 2005, the Bankruptcy Code amendments of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") apply.

Debtor has failed to file the following:

- a. Schedules A through J;
- b. Statement of Financial Affairs; and
- c. Chapter 13 Plan.

There has been a total of fifty-nine (59) days between the filing of the petition and the filing of this motion. A true and correct copy of the Clerk's Docket Sheet is attached hereto as evidence in support of this request. (Exhibit "A") Furthermore, the Debtor has failed to appear at his meeting of creditors March 16, 2010 at 9:00 pm. The Confirmation Hearing is scheduled for April 22, 2010. The Debtor has made no payments to the Trustee to date.

The Debtor has filed four (4) prior Chapter 13 cases. The first case, numbered 09-13404, was filed on March 12, 2009. On May 6, 2009, it was dismissed for failure to file required documents per 11 U.S.C. §521(i). The second case, numbered 09-18448, was filed on May 22, 2009. On July 20, 2009, it was dismissed by the court for Debtor's failure to file required documents per 11 U.S.C. 521(i). The third case, numbered 09-24944, was filed on August 14, 2009. On October 19, 2009, it was dismissed by the court for failure to file required documents per 11 U.S.C. 521(i). The fourth case, numbered 09-30700, was filed on October 30, 2009, just eleven (11) days after the previous dismissal. On January 26, 2010, the case was dismissed for failure to make plan payments and for failure to file required documents under 11 U.S.C. 521(i).

#### STATEMENT OF LAW

11 U.S.C. §521(i) provides, in pertinent part, that:

- (1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.
- (2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

11 U.S.C. §1321 provides that the debtor shall file a plan.

11 U.S.C. §1326 provides, in pertinent part, that:

- (1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier...

11 U.S.C. §109(g) provides, in pertinent part, that:

Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if –

- (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case...

ARGUMENT

The forty-five (45) day period expired on March 19, 2010. To this date Debtor has failed to file the required documents in accordance with 11 U.S.C. §521(i), namely all schedules, and a statement of financial affairs. 11 U.S.C. §521(i) dismisses debtors who fail to comply with §521(a)(1). Therefore, the Trustee, as a party in interest, requests an Order of Dismissal to be entered pursuant to §521(i)(2).

Moreover, pursuant to 11 U.S.C. §109(g), a debtor who fails to appear and prosecute their case shall be barred from re-filing for 180 days. "Failure to attend a creditors meeting is a failure to obey a court order within the meaning of section 109(g)." In re Montgomery 37 F.3d 413 C.A. 8, 1994 (8th Cir. 1994) [citing In re Pappalardo, 109 B.R. 622, 625 (Bankr. S.D.N.Y. 1990)]. In the instant case, the Debtor failed to appear at the meeting of creditors on March 16, 2010. Additionally, Debtor has not filed a proposed Plan per 11 U.S.C. §1321, and has failed to commence making payments in accordance with 11 U.S.C. §1326. Furthermore, Debtor has filed four (4) previous bankruptcies within one year. Each case was filed less than a month of the previous dismissal. Because the Debtor has repeated filings and each of the cases have been filed in less than the 180 day time period, the Debtor should be barred from filing for the next 180 days.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, the Chapter 13 Trustee respectfully requests this Honorable Court for an Order:

1. dismissing Debtor's case with prejudice; and
2. barring the Debtor from filing another bankruptcy for 180 days because of the Debtor's failure to appear and prosecute his case; and
3. for such other relief as may be just and equitable.

DATED this 2nd day of April, 2010.

/s/ Tirzah F. Mathews

TIRZAH F. MATHEWS, ESQ.

Nevada Bar No. 11647

201 Las Vegas Blvd. South, Suite 200

Las Vegas, Nevada 89101

Attorney for the Trustee, KATHLEEN A. LEAVITT

DebtEd, BAPCPA, FeeDueINST

**U.S. Bankruptcy Court  
District of Nevada (Las Vegas)  
Bankruptcy Petition #: 10-11613-mkn**

Date filed: 02/02/2010

Assigned to: MIKE K. NAKAGAWA  
Chapter 13  
Voluntary  
Asset

**Debtor**  
**DIANA D GONZALEZ**  
7330 LINARIA RD  
LAS VEGAS, NV 89113  
SSN / ITIN: xxx-xx-8913

represented by **DIANA D GONZALEZ**  
PRO SE

**Trustee**  
**KATHLEEN A. LEAVITT**  
201 LAS VEGAS BLVD., SO. #200  
LAS VEGAS, NV 89101  
(702) 853-0700

Filing Date	#	Docket Text
02/02/2010	<u>1</u>	Chapter 13 Voluntary Petition. Fee Amount \$274. Filed by DIANA D GONZALEZ (mrb) (Entered: 02/02/2010)
02/02/2010	<u>2</u>	Meeting of Creditors and Notice of Appointment of Trustee KATHLEEN A. LEAVITT. 341 meeting to be held on 03/16/2010 at 09:00 AM at 341s - Foley Bldg,Rm 1500. Confirmation hearing to be held on 04/22/2010 at 01:30 PM at Foley Bldg,Third Floor. Objection to Dischargeability of Certain Debts due by 05/17/2010. Chapter 13 Proof of Claims due by 06/14/2010. (Entered: 02/02/2010)
02/02/2010	<u>3</u>	Statement of Social Security Number(s). <b>This document contains sensitive information and cannot be viewed by the public.</b> Filed by DIANA D GONZALEZ (mrb) (Entered: 02/02/2010)
		Application and Order to Pay Filing Fee in Installments First Installment Payment due by 2/5/2010. Second Installment Payment due by 3/5/2010. Third Installment Payment due by 4/5/2010. Final Installment Payment due by 5/5/2010. (mrb)

**"EXHIBIT A"**

02/02/2010	<u>4</u>	(Entered: 02/02/2010)
02/02/2010	<u>5</u>	Set Deficient Filing Deadlines. Incomplete Filings due by 2/16/2010. Deficient Matrix due by 2/8/2010. Summary of schedules due by 2/16/2010. Schedules A-J due by 2/16/2010. Declaration Re: Schedules due by 2/16/2010. Statement of Financial Affairs due by 2/16/2010. Declaration Re: Statements due by 2/16/2010. Chapter 13 Plan due by 2/16/2010. Chapter 13 Means Test Form 22C Due 2/16/2010 (mrb) (Entered: 02/02/2010)
02/02/2010	<u>6</u>	Notice of Incomplete and/or Deficient Filing. (mrb) (Entered: 02/02/2010)
02/03/2010	<u>7</u>	Order Reassigning Case to Bankruptcy Judge MIKE K. NAKAGAWA. (had) (Entered: 02/03/2010)
02/03/2010	<u>8</u>	Previous Dismissal. Chapter: 13. Case Number: 09-30700. Date Filed: 10/30/2009. District: NV. Date of Previous Dismissal: 1/26/2010. (had) (Entered: 02/03/2010)
02/03/2010	<u>9</u>	Previous Dismissal. Chapter: 13. Case Number: 09-24944. Date Filed: 8/14/2009. District: NV. Date of Previous Dismissal: 10/19/2009. (had) (Entered: 02/03/2010)
02/03/2010	<u>10</u>	Previous Dismissal. Chapter: 13. Case Number: 09-18448. Date Filed: 5/22/2009. District: NV. Date of Previous Dismissal: 7/20/2009. (had) (Entered: 02/03/2010)
02/03/2010	<u>11</u>	Previous Dismissal. Chapter: 13. Case Number: 09-13404. Date Filed: 3/12/2009. District: NV. Date of Previous Dismissal: 5/6/2009. (had) (Entered: 02/03/2010)
02/04/2010	<u>12</u>	BNC Certificate of Mailing (Related document(s) <u>2</u> Meeting of Creditors Chapter 13 (BNC)) No. of Notices: 1. Service Date 02/04/2010. (Admin.) (Entered: 02/04/2010)
02/04/2010	<u>13</u>	BNC Certificate of Mailing. (Related document(s) <u>6</u> Incomplete and/or Deficient Filing-Ch 13 (BNC)) No. of Notices: 1. Service Date 02/04/2010. (Admin.) (Entered: 02/04/2010)
02/10/2010	<u>14</u>	Request for Special Notice Filed by AMERICA'S SERVICING COMPANY (MCCALLA, RAYMER, LLC (mh)) (Entered: 02/10/2010)
		Ex Parte Application <i>FOR AN ORDER PURSUANT TO 362 (c) (4)(A)(i)</i> Filed by GREGORY L. WILDE on behalf of US BANK

02/22/2010	<u>15</u>	NATIONAL ASSOCIATION (WILDE, GREGORY) (Entered: 02/22/2010)
03/08/2010	<u>16</u>	Order Re Ex Parte Application for an Order Pursuant to 362(c)(4) (A)(i) (Related document(s) <u>15</u> ) (jdr) (Entered: 03/08/2010)
03/10/2010	<u>17</u>	Notice of Appearance and Request for Notice with Certificate of Service Filed by JAMES E. SHIVELY on behalf of DCFS USA, LLC f/k/a Mercedes Benz Financial (SHIVELY, JAMES) (Entered: 03/10/2010)
03/12/2010	<u>18</u>	Notice of Entry of Order with Certificate of Service Filed by GREGORY L. WILDE on behalf of US BANK NATIONAL ASSOCIATION (Related document(s) <u>16</u> Order on Miscellaneous Application) (WILDE, GREGORY) (Entered: 03/12/2010)
03/14/2010	<u>19</u>	Motion for Relief from Stay Property: 2002 Mercedes ML 320 Fee Amount \$150. with Proposed Order with Certificate of Service Filed by JAMES E. SHIVELY on behalf of DCFS USA, LLC f/k/a Mercedes Benz Financial (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(SHIVELY, JAMES) (Entered: 03/14/2010)
03/14/2010	<u>20</u>	Notice of Hearing <i>On Motion for Relief From Automatic Stay</i> Hearing Date: 04/21/2010 Hearing Time: 1:30 PM with Certificate of Service Filed by JAMES E. SHIVELY on behalf of DCFS USA, LLC f/k/a Mercedes Benz Financial (Related document(s) <u>19</u> Motion for Relief from Stay filed by Creditor DCFS USA, LLC f/k/a Mercedes Benz Financial) (SHIVELY, JAMES) (Entered: 03/14/2010)
03/15/2010	21	Receipt of Filing Fee for Motion for Relief from Stay(10-11613-mkn) [motion,mrlfsty] ( 150.00). Receipt number 8296088, fee amount \$ 150.00. (U.S. Treasury) (Entered: 03/15/2010)
03/15/2010	22	Hearing Scheduled/Rescheduled.Hearing scheduled 4/21/2010 at 01:30 PM at MKN LV-Courtroom 2, Foley Federal Bldg. (Related document(s) <u>19</u> Motion for Relief from Stay filed by Creditor DCFS USA, LLC f/k/a Mercedes Benz Financial) (gab) (Entered: 03/15/2010)
03/17/2010	<u>23</u>	Trustee's Opposition to Confirmation of Plan Combined with Trustee's Recommendation for Dismissal. <i>PLAN 1</i> (LEAVITT (ec), KATHLEEN) (Entered: 03/17/2010)
03/18/2010	24	341 Meeting Off Calendar (LEAVITT (jy), KATHLEEN) (Entered: 03/18/2010)

03/20/2010	<u>25</u>	BNC Certificate of Mailing - pdf (Related document(s) <u>23</u> Trustee's Opposition to Confirmation/Recommendation for Dismissal (BNC)) No. of Notices: 11. Service Date 03/20/2010. (Admin.) (Entered: 03/20/2010)
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Transaction Receipt			
04/02/2010 07:35:28			
<b>PACER Login:</b>	km0269	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	10-11613-mkn Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Format: html
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.16